



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0118; FRL-9662-4]

Approval and Promulgation of Implementation Plans;

Alabama: Removal of State Low-Reid Vapor Pressure Requirement for the Birmingham Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM), on January 10, 2012, for parallel processing. ADEM submitted the final version of the SIP revision on March 2, 2012. The revision modifies Alabama's SIP to move Chapter 335-3-20 "Control of Fuels," which includes the regulation that governs the State's 7.0 pounds per square inch (psi) requirement for the low-Reid Vapor Pressure (RVP) fuel program in Jefferson and Shelby Counties (hereafter referred to as the "Birmingham Area") from the active measures portion of the Alabama SIP to the contingency measures portions of the maintenance plans for the Birmingham Area for the ozone national ambient air quality standards (NAAQS or standards), and of the proposed maintenance plans for the 1997 annual fine particulate matter (PM_{2.5}) standards, and the 2006 24-hour PM_{2.5} standards, when those actions are finalized. The change to the SIP will result in the federal RVP requirement of 7.8 psi applying for the Birmingham Area. EPA is approving this SIP revision because the State has demonstrated that it is consistent with section 110 of the Clean Air Act (CAA or Act).

DATES: This final rule is effective [insert date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R04-OAR-2012-0118. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can also be reached via electronic mail at lakeman.sean@epa.gov.

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I. What is the background for this final action?

On March 2, 2012, ADEM submitted a revision to the Alabama SIP to move the state-level RVP requirement of 7.0 psi from the active measures portions of the SIP to the contingency measures portions of the SIP. The applicable RVP requirement would then be the federal 7.8 psi requirement and the 7.0 psi state-level requirement would be a part of the maintenance plans as contingency measures for the NAAQS discussed above. The State is not seeking a change to the federal RVP requirements of 7.8 psi that are applicable to the Birmingham Area.

Section 211(h) of the CAA requires EPA to set a maximum RVP standard of 9.0 psi during the high ozone season, which is defined as June 1st through September 15th of each year. *See also* 40 CFR 80.27. The CAA provides for more stringent requirements to be established for ozone nonattainment areas. In accordance with CAA section 211(h), EPA established a two-phase reduction in high ozone season commercial gasoline volatility. These rules focus on reducing gasoline emissions of volatile organic compounds (VOC). Phase I was applicable to calendar years 1989 through 1991. Depending on the state and month, gasoline RVP was not to exceed 10.5 psi, 9.5 psi, or 9.0 psi. *See* 54 FR 11868 (March 22, 1989). Phase II was applicable to calendar years 1992 and later. Depending on the state and month, gasoline RVP may not exceed 9.0 psi or 7.8 psi. *See* 55 FR 23658 (June 11, 1990). A current listing of the RVP

requirements for states can be found on EPA's website at:

<http://www.epa.gov/otaq/fuels/gasolinefuels/volatility/standards.htm>.

The Birmingham Area was originally classified as a 1-hour ozone nonattainment area by EPA on March 3, 1978 (43 FR 8962). The Birmingham nonattainment Area at that time was geographically defined as Jefferson County, Alabama. On November 6, 1991, by operation of law under section 181(a) of the CAA, EPA classified the Birmingham nonattainment area as a marginal nonattainment area for the 1-hour ozone NAAQS and added Shelby County to the nonattainment area (56 FR 56693). The nonattainment classification for the Birmingham marginal ozone area was based on ambient air sampling measurements for ozone made during 1987-1989. As an ozone nonattainment area, the Birmingham Area was subject to the federal RVP requirements of 7.8 psi for both Jefferson and Shelby Counties.

Section 211(c)(4)(C) of the CAA allows states to seek a waiver from EPA to adopt into the federally-approved SIP, a state fuel program that is more stringent than federal requirements. Subsequently, in 2001, EPA approved a state fuel program that imposed a 7.0 psi requirement for this area, under section 211(c)(4)(C) of the CAA. The low-RVP fuel program required that all gasoline sold during the control period (June 1st through September 15th) in the Birmingham Area contain a maximum RVP of 7.0 psi.

The Birmingham Area subsequently attained the 1-hour ozone NAAQS and was redesignated for that NAAQS on March 12, 2004. *See* 69 FR 11798. At that time, ADEM included the 7.0 psi RVP requirement in its maintenance plan. Thereafter, the Birmingham Area was designated as a nonattainment for the more stringent 1997 8-hour ozone NAAQS, effective June 15, 2004 (69 FR 23858). On May 12, 2006 (71 FR 27631), the Birmingham Area was

redesignated to attainment for the 1997 8-hour ozone NAAQS.¹ As part of the requirement to be redesignated to attainment, ADEM developed a maintenance plan pursuant to CAA section 175A(a) that demonstrated the Area would maintain the 1997 8-hour ozone NAAQS for at least 10 years after redesignation. In that maintenance demonstration, ADEM, in its emissions projections, adopted a conservative approach to the fuel requirement in the Area by assuming a high ozone season RVP requirement of 9.0 psi as opposed to 7.0 psi.² The State demonstrated that the Area could continue to maintain the ozone NAAQS with the 9.0 psi requirement.

EPA's primary consideration for determining the approvability of Alabama's SIP revision is whether this requested action complies with section 110(l) of the CAA. Section 110(l) of the CAA states:

Plan Revision – Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

42 U.S.C. 7410(l).

Alabama's March 2, 2012, SIP revision requested only that the state-level requirement of 7.0 psi be moved from the active measures portions of the Alabama SIP to the contingency

¹ On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS – also known as the 2008 8-hour ozone NAAQS. Currently, the Agency is reviewing individual area's compliance with the revised 8-hour ozone NAAQS and anticipates completing a designation process in the Spring of 2012. Today's rulemaking is not related to the 2008 8-hour ozone NAAQS, however, EPA notes that 2008-2010 and preliminary 2009-2011 monitoring data suggests that the Birmingham Area is attaining the 2008 8-hour ozone NAAQS.

² The Birmingham Area was also designated nonattainment for the 1997 PM_{2.5} and the 2006 PM_{2.5} NAAQS. In association with these redesignation requests, EPA proposed to approve maintenance plans which assume a high ozone season RVP requirement of 7.8 psi as opposed to the State requirement of 7.0 psi. Throughout this rulemaking, EPA's reference to the maintenance plans for the 1997 PM_{2.5} and 2006 PM_{2.5} NAAQS is in reference to the proposed maintenance plans because these plans have been proposed for approval by EPA but have not yet been finalized.

measures portions of the maintenance plans for the ozone NAAQS, the annual 1997 PM_{2.5} standards and the 2006 24-hour PM_{2.5} standards. Because the RVP requirements currently are a part of the SIP, the revision must meet the requirements of CAA section 110(l). Therefore, as part of Alabama's SIP revision request to change its RVP requirement, Alabama must demonstrate that the revision will not interfere with the attainment or maintenance of any of the NAAQS or any other applicable requirement of the CAA.

Developing what is necessary for a SIP revision to comply with section 110(l) is a case-by-case determination based upon the circumstances of each revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which the EPA has not yet made designations. The specific elements of the SIP revision depend on the circumstances and emissions analyses. The State's request does not involve a modification of the 7.8 psi federal RVP requirement, which is separately applicable by federal regulation (40 CFR 80.27) to both Jefferson and Shelby Counties. On March 5, 2012, EPA published a proposed rulemaking to approve the January 10, 2012, SIP revision under parallel processing. *See* 77 FR 13055. The proposed rulemaking considered the potential impacts with regard to a difference in RVP requirements for the Birmingham Area between the state-level requirement of 7.0 psi and the federal-level requirement of 7.8 psi.

Alabama's March 2, 2012, SIP revision included an evaluation of the impact that the removal of the 7.0 psi state-level RVP requirement would have on the applicable NAAQS. For the purposes of this change, EPA made the preliminary determination that the applicable NAAQS³ of interest for the noninterference demonstration required by section 110(l) of the CAA are the ozone, particulate matter and nitrogen oxides (NO₂) standards because the RVP

³ The six NAAQS that EPA establishes health and welfare based standards are CO, lead, NO₂, ozone, particulate matter, and SO₂.

requirements result primarily in emissions benefits for VOCs and nitrogen oxides (NO_x). VOCs and NO_x emissions are precursors for ozone and particulate matter, and NO₂ is a component of NO_x. Information regarding the State's analysis is provided in the EPA's March 5, 2012, proposed rulemaking. There are no emissions reductions attributable to the emissions of carbon monoxide (CO), lead and sulfur dioxide (SO₂) from RVP requirements. As a result, there is no information indicating the revision would have any impact on those NAAQS. Additionally, the Birmingham Area is currently designated attainment for the CO, lead and SO₂ NAAQS, and is continuing to attain these standards. Therefore, the analysis in the March 5, 2012, rulemaking focused on the impact of Alabama's changes to the RVP requirements on the ozone, particulate matter and NO₂ NAAQS. *See* 77 FR 13055.

EPA's March 5, 2012 (77 FR 13055), proposed approval was contingent upon Alabama providing EPA with a final SIP revision that was not changed significantly from the January 10, 2012, revision. Alabama provided its final SIP revision on March 2, 2012. There were no significant changes made to the final submittal. There are minor differences between the draft and final SIP submittals due to changes made by ADEM in response to comments made by EPA during the public comment period. EPA received no adverse comments on the March 5, 2012, proposed rulemaking.

II. What is the effect of this action?

The action being finalized today will remove the 7.0 psi requirement from the active portion of the Alabama SIP to the contingency measures portion of the maintenance plans for the ozone, and the proposed maintenance plans for the 1997 PM_{2.5} and 2006 PM_{2.5} NAAQS, if

finalized. This change will result in the federal RVP requirement of 7.8 psi applying for the Birmingham Area.

III. What is EPA's final action?

EPA is taking final action to approve Alabama's March 2, 2012, SIP revision regarding the State's regulation at Chapter 335-3-20 "Control of Fuels" which identifies Alabama's 7.0 psi requirement for the low-RVP fuel program in the Birmingham Area (i.e., Jefferson and Shelby Counties). Specifically, Alabama's March 2, 2012, SIP revision moves the State's 7.0 psi requirement for low-RVP fuel program in the Birmingham Area from the active measures portion to the contingency measures portions of the maintenance plans for ozone standards, and the proposed maintenance plans for the annual 1997 PM_{2.5} standard and the 2006 24-hour PM_{2.5} standard, if finalized. This final will result in applicability of the federal RVP requirement of 7.8 psi for the Birmingham Area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary and will eliminate any uncertainty as to which fuel requirement refiners that supply fuel to the Area must adhere to for the summer of 2012. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes

effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule will provide refiners time to plan for and supply fuel to the area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements and Volatile organic compounds.

Dated: April 11, 2012

A. Stanley Meiburg,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart B - Alabama

2. Section 52.50(c) is amended by revising the heading for “Chapter No. 335-3-20,” and the entries for “Section 335-3-20-.01,” “Section 335-3-20-.02,” and “Section 335-3-20-.03” to read as follows:

§52.50 Identification of plan.

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(c) * * *

EPA Approved Alabama Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	* *	*	*	*
Chapter No. 335-3-20 Reserved				
Section 335-3-20-.01	Reserved	4/3/12	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
Section 335-3-20-.02	Reserved	4/3/12	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

Section 335-3-20.03	Reserved	4/3/12	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
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[FR Doc. 2012-9446 Filed 04/19/2012 at 8:45 am; Publication Date: 04/20/2012]